IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 213 OF 2002.

Shri Uday N. Parab,
Police Sub-Inspector,
Margao Town Police,
Margao. Goa. ... Petitioner.

Versus

1. State of Goa through
   Chief Secretary,
   Secretariat, Panaji.
2. Deputy Inspector General
   of Police, Panaji.
3. Director of General of
   Police, Panaji. ... Respondents.

Mr. M.S. Sonak, Advocate for the Petitioner.

Mr. Guru Shirodkar, Additional Government Advocate for the Respondents.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 11th August 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The petitioner has filed the present petition seeking the quashing and setting aside of the impugned Order, dated 21st November 2001, passed by the Deputy Inspector General of Police and also for quashing and setting aside the Order, dated 18th March 2002, passed by the Director General of Police, Goa, dismissing the appeal filed by the petitioner.

2. The facts in brief as are necessary for the decision of this petition are stated hereunder:-

The petitioner is a Police Sub-Inspector

posted at the Margao Town Police Station, Margao, Goa. A disciplinary proceeding was initiated against the petitioner, by Order, dated 25th July 1997, issued by the Inspector General of Police. After completion of the disciplinary proceeding, the Inquiry Officer. Mr. A.K. Teli, Deputy Superintendent of Police, submitted his report to the Disciplinary Authority, namely, the Director General of Police, who had become the Head of Department in place of the Inspector General of Police, in view of Goa attaining Statehood and consequent amendment to the Rules. On 31st October 2000, the Director General of Police, hereinafter referred to as DGP, issued a show cause notice stating therein that the DGP had tentatively accepted the findings of the Inquiry Officer and, therefore, proposed to impose on the petitioner the penalty of reduction to lower stage of pay by two stages in the time scale of Rs. 5500-175-9000 for a period of two years bearing effect on future increments of pay. By the said show cause notice, the petitioner was called upon to show cause why the said punishment should not be imposed on him. The petitioner in response to the show cause notice, dated 31st October 2000, submitted a detailed representation, dated 18th November 2000, to the DGP. The Deputy Inspector General of Police by his Order, dated 21st November 2001, imposed the punishment proposed by the DGP in the show cause notice, dated 31st October 2000.

The petitioner, being aggrieved by the said punishment, filed an appeal before the Appellate Authority, that is, the DGP. The DGP by his Order impugned in the present petition, dated 18th March 2002, dismissed the appeal filed by the petitioner.

3. Various grounds have been urged in the petition , but, Mr. Sonak, the learned counsel appearing for the petitioner has urged only the following ground before us:-

According to the learned counsel for the petitioner, the DGP had issued the show cause notice, dated 31st October 2000. The show cause notice clearly demonstrates that the DGP had applied his mind to the facts and had tentatively accepted the findings of the Inquiry Officer. In the said show cause notice the DGP had also proposed the punishment. The punishment proposed by the DGP was in fact imposed by the Deputy Inspector General of Police by his Order, dated 21st November 2001. The appeal filed by the petitioner was heard by the Appellate Authority, who incidentally was the Deputy Inspector General of Police. Thus, it is submitted before us that the authority who had issued the show cause notice, dated 31st October 2000, was the same authority who had heard the appeal filed by the petitioner and this was in clear violation of the

principle of natural justice as the Appellate Authority had already made it known that it had accepted the findings of the Inquiry Officer and, therefore, the exercise of hearing the appeal was an empty formality.

4. An affidavit on behalf of the respondents of the Superintendent of Police is filed. The affidavit deals with the various challenges in the petition and in paragraph 12(a) it is stated that in view of the amendment to the Rules, the DGP was the only authority to hear the appeal against the Order passed by the Deputy Inspector General of Police. It is also stated that the petitioner himself had filed the appeal before the DGP and had made no grievance that the DGP was not competent to hear the appeal.

5. An appeal is a substantive right. The Appellate Authority is enjoined in law to re-appreciate the evidence and arrive at its own independent conclusion. An Authority, as in this case the DGP, who had issued the show cause notice, dated 31st October 2000, informing the petitioner that the DGP had accepted, though tentatively, the findings of the Inquiry Officer, according to us, could not have heard the appeal filed by the petitioner as the DGP had clearly expressed his opinion. The hearing of the appeal, therefore, before the same Authority, who had

issued the show cause notice, according to us, is against the principle of natural justice as there has been no dispassionate reappraisal of the evidence/material on record in respect of the charge levelled against the petitioner. Hearing of an appeal by an Authority which had already disclosed its mind of accepting the inquiry report is an illusory exercise and, therefore, the hearing of the appeal was a mere formality. Mr. Shirodkar, the learned Additional Government Advocate, states that the DGP, who had issued the show cause notice and who had heard the appeal has, since the filing of the petition, been transferred and a new incumbent is appointed as the Deputy Inspector General of Police.

6. We are, therefore, of the considered opinion that the Order of the DGP, dated 18th March 2002, dismissing the appeal filed by the petitioner, is unsustainable and, therefore, we have no hesitation in quashing the same. All other contentions raised in the petition are kept open. In the light of that, the appeal will have to be re-heard by the Deputy Inspector General of Police.

7. The impugned Order, dated 18th March 2002, is, hereby, quashed and set aside and the Appellate Authority/DGP is directed to re-hear the appeal filed by

the petitioner afresh after giving the petitioner an opportunity of hearing. The Appellate Authority/DGP to decide the appeal within 8 weeks from today. Rule accordingly, with no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.